

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ERIC JEFFREY NELSON,

Plaintiff,

v.

HIGH DESERT STATE PRISON,

Defendant.

Case No. 2:14-cv-390-APG-PAL

**ORDER**

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a former state prisoner. On April 17, 2014, Magistrate Judge Leen issued an order dismissing the complaint in its entirety with leave to amend and directed Plaintiff to file an amended complaint within thirty days. (ECF No. 5 at 5-6). The thirty-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
 2 cases on their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d  
 3 at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-  
 4 61; *Ghazali*, 46 F.3d at 53.

5 In the instant case, the Court finds that the first two factors, the public's interest in  
 6 expeditiously resolving this litigation and the Court's interest in managing the docket, weigh  
 7 in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
 8 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in  
 9 filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542  
 10 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy favoring disposition of cases  
 11 on their merits – is greatly outweighed by the factors in favor of dismissal discussed herein.  
 12 Finally, a court's warning to a party that his failure to obey the court's order will result in  
 13 dismissal satisfies the "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262;  
 14 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's order requiring  
 15 Plaintiff to file an amended complaint within thirty days expressly stated: "IT IS FURTHER  
 16 ORDERED that if Plaintiff fails to file an amended complaint curing the deficiencies outlined  
 17 in this order, this action will be dismissed with prejudice." (ECF No. 5 at 6). Thus, Plaintiff had  
 18 adequate warning that dismissal would result from his noncompliance with the Court's order  
 19 to file an amended complaint within thirty days.

20 **IT IS THEREFORE ORDERED** that this action is DISMISSED <sup>without OA</sup>with prejudice based on  
 21 Plaintiff's failure to file an amended complaint in compliance with this Court's April 17, 2014,  
 22 order and for failure to state a claim.

23 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly.

24 Dated: May 21, 2014.

25   
 26 UNITED STATES DISTRICT JUDGE  
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